Lawson Printers Inc. *and* Local 263, Graphic Arts International Union, AFL-CIO. Cases 7-CA-19378, 7-CA-19550, and 7-CA-19746

29 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 28 April 1983 Administrative Law Judge James T. Youngblood issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified herein.[2]

We agree with the judge's conclusion, for the reasons stated in his decision, that the Respondent unilaterally laid off virtually the entire bargaining unit on 1 July 1981, some for the whole day and some for half the day, in violation of Section 8(a)(5) and (1) of the Act. We also agree with the judge's conclusion that such action by the Respondent was designed to "punish" unit employees for their support of the Union and therefore was violative of Section 8(a)(3) and (1), but we do so for the following reasons.

The Respondent's posted work schedule for the week of 28 June 1981 to 4 July 1981 indicated that the plant would be closed on Wednesday, 1 July, and Thursday, 2 July, and that employees would receive a paid holiday for 2 July but would have to take a vacation day for 1 July if they wanted to be paid for a full 40-hour week. When pressroom employee Hoag asked his supervisor, Elliott, about the 1 July closing, he was told it was for inventory. Credited testimony indicates, however, that the pressroom inventory had been completed by 1 July and that there was regular pressroom work to be done on 1 July. As it turned out, two pressroom employees, Gallop and Jacobs, worked the entire day on 1 July,[3] and the bindery employees worked for half the day.

It is undisputed that the Respondent's conduct in closing the plant and not paying employees on the day adjacent to a paid holiday was contrary to its predominant past practice during holiday weeks. Such an unpaid closing apparently had occurred only once before, i.e., when the plant was officially closed on 4 and 5 July 1979, but 4 July was the one paid holiday that week. It also is undisputed that it was not the Respondent's regular practice to close the plant for the taking of inventory, but rather to have it done during normal working hours. We find it significant that this conduct by the Respondent came just 6 weeks after it unlawfully changed the routine press assignments of all but one of the pressroom employees, effectively demoting them to presses they operated formerly, and discriminatorily laid off employee Coats. We further note, as found by the judge, that the Respondent had told employees during the election campaign that everything was going to change if the Union got in, specifically threatening, inter alia, that in slack periods employees would be laid off rather than assigned to odd jobs around the plant.

In our view, the Respondent's scheduling of the unpaid holiday on 1 July, albeit with the option of conversion to a paid vacation day, amounted to a layoff for most of the unit employees. Based on the timing of such conduct, the deviation from past

[1] In adopting the judge's conclusion that the Respondent discontinued its practice of granting wage increases in violation of Sec. 8(a)(3) and (1), we rely on the following: the admission of the Respondent's president, Ullrich, that based on past experience employees could have expected wage increases in 1981 and 1982; the statements found by the judge to be violative of Sec. 8(a)(3) and (1) including Ullrich's statement to employees Washam and Gallop that he could not give them raises because of the Union, and former Supervisor Elliott's statement to Gallop that he and Washam had not received raises because of the Union; and the fact that no unit employee employed at the time the union campaign commenced in January 1981 received a wage increase after November or December 1980, while the Employer continued to hire new unit employees, some of them at wage rates higher than those paid to employees already employed.

While agreeing with her colleagues that the work reassignments made on 21 May 1981 were discriminatory, and thus violated Sec. 8(a)(3) and (1), Member Dennis would not find that the reassignments constituted unilateral changes in violation of Sec. 8(a)(5) and (1).

[2] In par. 1(i) of his recommended Order, the judge used the broad cease-and-desist language "in any other manner." However, we have considered this case in light of the standards set forth in *Hickmott Foods*, 242 NLRB 1357 (1979), and have concluded that the narrow cease-and-desist language "in any like or related manner" is appropriate. We shall modify the judge's recommended Order accordingly.

We also shall further modify the judge's recommended Order so as to require the Respondent to remove from its files any reference to the unlawful layoff of Craig Coats on 21 May 1981, and to the unlawful warning notices and absentee reports issued to Rockwell Lyon and Raymond Gallop in August 1981, and to notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future personnel actions against them. See *Sterling Sugars*, 261 NLRB 472 (1982).

We also shall modify the recommended Order so as to require the Respondent to rescind the 21 May 1981 unilateral changes in employees' routine press assignments and to restore the pressroom employees to the press positions they held prior to the 21 May reassignments. Finally, we shall modify pars. 1(h) and 2(a) of the recommended Order in order to more appropriately remedy the violations found.

[3] The judge characterized both Jacobs and Gallop as "non-union employees." However, although there is evidence that Jacobs did not sign a union authorization card and attended only the first union meeting, there is no basis for finding that Gallop did not support the Union, in view of his testimony that he signed an authorization card, attended a union meeting, and wore a union pin.

practice, and the animus evidenced by the other 8(a)(1) and (3) violations, we find that the 1 July layoff was taken in retaliation for the employees' union activities and therefore was violative of Section 8(a)(3) and (1).

ORDER

The National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified and set forth in full below and orders that the Respondent, Lawson Printers Inc., Battle Creek, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their union membership, activities, and sympathies.

(b) Soliciting grievances from its employees and promising that the Respondent would attempt to remedy said grievances without the Union's assistance.

(c) Informing employees that they had not received wage increases because of the Union and informing employees that they would receive no future wage increase because of the Union.

(d) Threatening to lay off employees in the future if they ran out of work rather than following its past practice of reassigning employees to other available work.

(e) Creating the impression that it was engaged in surveillance of employee union activities and sentiments.

(f) Refusing to grant unit employees periodic wage increases in conformance with its past practice regarding such increases.

(g) Discouraging membership in Local 263, Graphic Arts International Union, AFL–CIO, the Union, or any other labor organization, by refusing to grant unit employees periodic wage increases in conformance with its past practice regarding such increases; discriminatorily reducing the amount of overtime work assignments made available to its employees; adversely changing the routine press assignments of its pressroom employees; discriminatorily laying off its employees; and discriminatorily issuing employee warning notices and/or absentee reports.

(h) Failing and refusing to bargain collectively with the Union, the certified bargaining representative of the Respondent's employees, by unilaterally changing employees' routine press assignments, laying off employees, and issuing employee warning notices and/or absentee reports without prior notice to or consultation with the Union.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) On request, bargain with the Union regarding changes in routine press assignments, layoffs, and the issuance of employee warning notices or absentee reports.

(b) Rescind the 21 May 1981 unilateral changes in employees' routine press assignments and restore the pressroom employees to the press positions they held prior to such changes.

(c) Offer Craig Coats immediate and full reinstatement to his former job or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole in the manner described in the section of the judge's decision entitled "The Remedy" for any losses suffered as a result of his discriminatory layoff on 21 May 1981.

(d) Remove from its files any reference to the discriminatory layoff of Craig Coats on 21 May 1981 and notify him in writing that this has been done and that evidence of this unlawful layoff will not be used as a basis for future personnel actions against him.

(e) Rescind and remove from its files any reference to the discriminatory warning notices and absentee reports issued to employees Rockwell Lyon and Raymond Gallop, and notify them in writing that this has been done and that evidence of such unlawful warnings will not be used as a basis for future personnel actions against them.

(f) Put into effect all employee periodic wage increases which it denied its employees and make them whole in the manner described in the section of the judge's decision entitled "The Remedy."

(g) Make whole any of its employees discriminated against as found herein, in the manner described in the section of the judge's decision entitled "The Remedy."

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Post at its Battle Creek, Michigan facility copies of the attached notice marked "Appendix."[4]

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees concerning their union membership, activities, and sympathies.

WE WILL NOT solicit grievances from our employees and promise them that we will attempt to remedy said grievances without the Union's assistance.

WE WILL NOT inform our employees that the denial of wage increases was because of the Union and WE WILL NOT inform our employees that they will not receive future wage increases because of the Union.

WE WILL NOT threaten to lay off our employees in the future if they run out of work rather than following our past practice of reassigning employees to other available work.

WE WILL NOT create the impression that we are engaged in the surveillance of our employees' union activities.

WE WILL NOT refuse to grant unit employees periodic wage increases in conformance with our past practice regarding such increases.

WE WILL NOT discourage membership in Local 263, Graphic Arts International Union, AFL-CIO, or any other labor organization, by refusing to grant unit employees periodic wage increases in conformance with our past practice regarding such increases; discriminatorily reducing the amount of overtime work assignments available to our employees; adversely changing the routine press assignments of our pressroom employees; discriminatorily laying off our employees; and discriminatorily issuing employee warning notices and/or absentee reports.

WE WILL NOT fail or refuse to bargain collectively with the Union, the certified bargaining representative of our employees, by unilaterally changing employees' routine press assignments, laying off employees, and issuing employee warning notices and/or absentee reports without notice to or consultation with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union regarding changes in routine press assignments, layoffs, and the issuance of employee warning notices or absentee reports.

WE WILL rescind the 21 May 1981 unilateral changes in routine press assignments and restore our pressroom employees to the press positions they held prior to such changes.

WE WILL offer Craig Coats immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the discriminatory layoff of Craig Coats on 21 May 1981, and WE WILL notify him in writing that this has been done and that evidence of this unlawful layoff will not be used against him in any way.

WE WILL rescind and remove from our files any reference to the discriminatory warning notices and absentee reports issued to employees Rockwell Lyon and Raymond Gallop, and WE WILL notify them in writing that this has been done and that evidence of such unlawful warnings will not be used against them in any way.

WE WILL put into effect all employee periodic wage increases which we denied our employees and make them whole for any loss of wages with interest.

WE WILL make whole any of our employees found to be discriminated against and WE WILL make them whole for any loss of pay, with interest.

LAWSON PRINTERS INC.

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge. The consolidated amended complaint which issued on October 8, 1981, alleges that Lawson Printers Inc. (Lawson or Respondent), beginning in early February 1981,[1] engaged in various acts and conduct in violation of Section 8(a)(1), (3), (4), and (5) of the Act. In an answer dated October 15, Lawson denied the commission of any unfair labor practices. This matter was tried before me on September 13, 14, and 15, 1982, in Marshall, Michigan. All parties were represented at the hearing and following the hearing the Respondent and the Charging Party filed posttrial briefs which have been duly considered.[2]

On the entire record in this matter, and from my observations of the witnesses and their demeanor while testifying, and after due consideration of the briefs filed herein, I make the following[3]

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Michigan corporation, maintains its office and place of business at 605 Columbia Avenue West, Battle Creek, Michigan, where it is engaged in commercial printing. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that Local 263, Graphic Arts International Union, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

In early January, employee Keith Hoag was contacted by Union Representative Joe Horvath regarding his interest in a union, and about starting a union at the facility of the Respondent. After a meeting with Horvath, Hoag talked with other employees and a meeting was arranged between union representatives and the Respondent's employees around mid-January. At this meeting there were about 12 employees. Two separate unions, the Union, and the International Printing Pressmen presented their viewpoints to the employees. The next day Hoag had a conversation with the Respondent's president, Richard Ullrich, around noon, in the plant near the washbasin. Hoag credibly testified that he was washing his hands and Ullrich walked up to him and asked about the union meeting, and when Hoag said, "What union meeting?" Ullrich responded, "Well how about your meeting?" Hoag responded, "It went fine." Ullrich told Hoag that if they wanted a union the ball game would change, that he could not afford it, and that if the people ran out of work he would send them home, rather than have them do odd jobs as had been done in the past. He explained that there was no door on his office and if anyone had any problems they could come in and talk to him. Ullrich suggested that Hoag draw up a list of the employee grievances and bring them to him. Hoag testified that several days later he gave the list of grievances to Ullrich. Hoag stated that Ullrich looked the grievances over and said they were legitimate and that he would take care of them. Employee Craig Coats credibly testified that he overheard the conversation between Ullrich and Keith Hoag at the washbasin, and heard them discussing something about a meeting. He heard Ullrich say that they could have a union but the whole ball game would change. Ullrich stated that, instead of people helping out on the presses and painting walls, sweeping parking lots, and straightening up the shop and cleaning things up in general, he would start laying people off. He said he would not let them put in their 40 hours. He also heard Ullrich tell Keith Hoag to draw up a list of the employee complaints. Ullrich admitted that he solicited grievances from the employees so that he could find out why the employees wanted a union in order for him to convince them that they did not need a union.

It is my conclusion that Ullrich interrogated employee Hoag concerning the union meeting at his home and also gave the impression to Hoag that the employee's activities were under surveillance by informing Hoag that he was aware of the union meeting. Additionally, his threats to discontinue the company's past practice of assigning employees to odd jobs during the slow time if the union came in, and his solicitation of grievances, admittedly to convince the employees that they did not need a union, all violate Section 8(a)(1) of the Act as alleged in the complaint, and I so find.[4]

Hoag testified that after the first meeting they held weekly meetings on Wednesday nights. He testified that around January 30 they first obtained union-authorization cards, and it was at this meeting at his house on January 30 that the employees first signed union-authorized cards.

The record reflects that, on February 11, a representation petition in Case 7-RC-16250 was filed by the Union seeking to represent certain employees of the Respondent. On March 24, a Board-conducted election was held in which 13 of the eligible 14 voters cast their ballots, 9 were for the Union and 4 were against the Union. On April 20, a hearing was held with respect to the conduct

[1] Unless otherwise specified all dates refer to 1981.

[2] By letter dated December 2, 1982, the General Counsel advised that because of other pressing matters he was unable to file a brief. He advised, however, that he had reviewed the brief filed by the Charging Party and subscribed to the arguments made therein.

[3] The facts found herein are a compilation of the credited testimony, the exhibits, and stipulations of fact, viewed in light of logical consistency and inherent probability. Although these findings may not contain or refer to all of the evidence, all has been weighed and considered. To the extent that any testimony or other evidence not mentioned in this decision may appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative weight, surplusage, or irrelevant. Credibility resolutions have been made on the basis of the whole record, including the inherent probabilities of the testimony and the demeanor of the witnesses. Where it may be required I will set forth specific credibility findings.

[4] To the extent that there is any disagreement between the testimony of Ullrich and the General Counsel's witnesses, it is my conclusion that Ullrich's testimony is not to be credited.

of the election, based on the Respondent's objections. On November 19 a certification of representative was issued to the Union by the Board.

In the meantime, the Union, by letter dated February 6, had advised the Respondent of its organizational drive and that several of the employees in the plant were assisting the Union in this regard.

On March 19, 5 days before the scheduled Board election of March 24, Ullrich assembled the bargaining-unit employees in the bindery. Ullrich addressed the assembled employees, and informed them that he was wearing the union button upside down because he frowned on unions, that his pin was unhappy. Ullrich also told the assembled employees that everything would change if the Union got in, that he would not be able to give them odd jobs around the shop in slack periods, and that they would have to be laid off. He told the employees that he did not have a door on his office and they could come in and talk about their problems at any time.

Employee Byron Washam testified that at this meeting Ullrich informed the employees that he knew who the Union organizers were, and named Keith Hoag and Craig Coats. Ullrich himself testified that by March 19 he knew that Keith Hoag was one of the employees who was hostile to the Company because he was signing up people for the Union.

The employees who testified concerning this meeting all consistently testified that Ullrich solicited grievances from the employees asking them about their problems and what had made them go to the Union. Additionally, he promised that he would take care of these grievances. Ullrich admitted that he addressed the meeting and that he solicited grievances from the employees and promised to take care of these grievances so the employees would stop their support for the Union.

Based on the foregoing, it is clear that Ullrich's threats that employees would be laid off rather than assigned odd jobs during slack periods, his continued solicitation of grievances from the employees, and promises to resolve them without union interference in order to persuade the employees not to support the union, clearly violate Section 8(a)(1) of the Act, and I so find.

Employee Byron Washam testified that several weeks after the first union meeting at Hoag's home, he had a conversation in the plant with Dick Ullrich. He stated that Ullrich told him that he was up for a raise but that he could not give it to him because of the Union. Ullrich said that they had always been a family there and that he could not understand why the employees wanted a union.

Washam testified that several weeks after the election, he and Ray Gallop were working on a press when Ullrich joined them and stated that he did not know how the employees could do this to him. Gallop asked him what he meant and Ullrich said, "to vote a union in." Ullrich said that they had always been just like a family and he did not see how the employees could do this to him. Ullrich stated that he knew the employees who had voted for the Union and those who had voted against it. Again he repeated that he knew that Craig Coats and Keith Hoag were the main organizers behind the Union. These statements by Ullrich clearly give the impression to the employees that their union activities were under surveillance and clearly constitute interference with their rights guaranteed under Section 7, and violative of Section 8(a)(1) of the Act, and I so find. Additionally, Ullrich's statement to Washam that he would not get a pay raise because of the Union clearly violates Section 8(a)(1) of the Act, and I so find.

Ray Gallop testified that on July 1 he had lunch at the Round Table Bar in Battle Creek, Michigan, where he ran into company supervisor Bill Elliott and employee Roy Jacobs. Gallop stated that he immediately mentioned to Elliott the fact that he had not had a raise in a long time. Elliott responded by saying, "Well, don't look at me . . . I could have had you and Byron another dollar an hour right now but because of this union thing Dick got pissed off and he says fuck you." Elliott mentioned that Craig Coats, who had been laid off the week before, "will never see the back door again." Elliott also asked Gallop how he would vote if another election were held that day. This testimony stands uncontradicted, as neither Elliott nor Roy Jacobs was called to testify. The statement that the employees' regular wage increase had been stopped because of the Union clearly violates Section 8(a)(1) of the Act. Additionally, the question to Gallop as to how he would vote if a union election were held today, in view of the statement that the wage increases were held up because of the Union, clearly was to convey to the employees that this was a reprisal of their support of the Union and clearly intended to turn the employees against the Union in violation of Section 8(a)(1) of the Act, and I so find.

Paragraph 17 of the complaint alleges that, since early February, the Respondent has failed and refused to grant unit employees periodic wage increases in conformance with its past practice regarding such increases. This record clearly reflects that the company's past practice has always been to grant regular periodic wage increases to all bargaining unit personnel. This fact is undisputed and is clearly reflected by the General Counsel's Exhibit 3. This exhibit confirms that it was a consistent practice to give several wage increases per year to each unit employee which ranged from 25 cents to over a dollar an hour each time. Moreover, Dick Ullrich admitted this past practice and stated that the employees could have reasonably anticipated continuing to receive such increases in 1981 and 1982. The last increases were given in November 1980. The next increases would have been due around February.

The testimony reflects that Dick Ullrich told employees Byron Washam and Ray Gallop that they were due for raises but that he could not give them the raises because of the Union. Ullrich testified that he told these employees he could not give them their anticipated raises because of the situation and earlier testified that his attorney had advised him not to give the regular wage increase at that time. While this latter statement does not reflect that the discontinuance of the wage was for discriminatory reasons, it clearly reflects that the discountinuance of the wage increases was in no way related to economic matters.

As indicated, it is undisputed that the consistent practice of granting several wage increases per year was abruptly halted after the advent of the Union. And as can be seen from the General Counsel's Exhibit 3, which is a exhibit, the bargaining unit personnel received no wage increases after November or December 1980. It would appear from the evidence presented in this record that the discontinuance of the wage increases was limited to the bargaining-unit personnel and did not apply to those employees outside the bargaining unit or those employees hired into the bargaining unit after the election.

Thus, the record reflects that Jack Thurston, an employee claimed by the Respondent to be outside the bargaining unit, received a wage increase on April 12, 1982. David Barnard was hired on May 4, 1981, at $5.50 an hour and on May 10, 1981, he received a 50-cent-an-hour increase and on June 21, 1981, received $1 increase to $7.[5] Joel Gerber was hired part time on March 5, 1981, and hired full time on August 18, 1981, and received a $3 wage increase on August 18, 1981, to $7. Mike Bran was hired on May 26, 1981, at $10.10 an hour. He quit in October 1981 and was rehired March 5, 1982, at $11 an hour. Michael Haley was hired on June 21, 1982, at $7 an hour and testified that Ullrich promised him a wage increase of up to $2 an hour within 60 days after he was hired. Former employee K.C. Jones was rehired on September 22, 1981, at $10 an hour being $2.25 higher than when he quit on November 6, 1980. These facts clearly show me that the wage freeze was directed only against those employees who favored and supported the Union. Additionally, this disparate treatment clearly establishes that economic conditions were not a factor in denial of the wage increases.

The testimony by employee Ray Gallop clearly indicates that Superintendent Bill Elliott told him that the only reason he and another employee were not getting a wage increase was because Ullrich was mad about the Union. Additionally, the question to Gallop of how would he vote if another union election was held that day clearly indicates that the wage increases were deliberately designed and intended by the Company to chill the employee's support for the Union.

In August and September 1982, Ullrich had several conversations with Keith Hoag and K. C. Jones in which the subject of employees signing a petition to repudiate the Union was discussed. In these conversations Ullrich conditioned future wage increases on the signing of such a petition. This clearly confirms that the freeze on wages of those employees involved with the Union was directly linked to their support for the Union.

This record is replete with statements by the Respondent's agents that the Respondent's sudden termination of its longstanding practice of regular wage increases was directly related to the employees' desire to be represented by a union and done to force the employees to repudiate the union. There is no question in my mind that the Respondent's discontinuance of its long practice of granting wage increases to the bargaining unit employees was discriminatory and was designed to discourage membership in the Union. As such, this conduct clearly violates Section 8(a)(3) and (1) of the Act as alleged in paragraph 17 of the complaint.

Paragraph 18 of the complaint alleges that, since early February 1981, the Respondent has discriminatorily reduced the amount of overtime work assignments available to its employee Keith Hoag and since March 24, 1981, discriminatorily reduced the amount of overtime work assignments available to its employee, Craig Coats.

The record reflects that in 1978 Keith Hoag averaged 5.92 hours of overtime per week. In 1979 he averaged 5.45 hours of overtime per week and in 1980 he averaged 3.25 hours per week overtime. Additionally, for the first 11 weeks of 1981 through March 21, Hoag averaged 3.8 hours of overtime. On March 24, 1981, the election was held and from that point until the end of 1981, Hoag averaged .62 hours of overtime per week for the remaining 41 weeks in 1981. It can readily be seen that his overtime hours were drastically cut following the election.

Hoag testified that following the election the Respondent no longer assigned overtime to him when his press was running a job which required overtime. He stated that on one occasion he asked Bill Elliott, the supervisor, if he should work overtime to perform a job which was being run on his press. Elliott checked with the front office and informed Hoag "there is overtime to be given on this job but we don't want you to get it." This testimony stands undisputed on the record. Hoag testified that on several occasions work was taken from his press and placed on other presses to be completed. He stated that this had never happened in the past. Don Richard, a supervisor and one of Respondent's witnesses, admitted that this had been done to Hoag but testified that it was to balance his workload with Mike Brand.

Craig Coats was hired in June 1980 and, from the week ending July 26 until the end of the year 1980, Coats worked an average of 2.7 hours of overtime per week for that 23 weeks. In 1981, through the first 12 weeks ending on March 21, 1981, Coats worked an average of 2.7 hours of overtime. From the week ending March 21, several days before the election of March 24, until Coats was laid off in May 1981, a total of 9 weeks, Coats worked on .3 hours of overtime being an average of .03 hours of overtime per week. This clearly establishes the fact that, following the election, the overtime for Coats was also drastically reduced.

Byron Washam testified that both Coats' and Hoag's overtime was reduced after they had publicly supported the Union. He testified that they were repeatedly told to go home rather than finish work on their presses which would require overtime. He testified that on one occasion in mid-May 1981, he had arranged with Coats to work overtime in his place. When Supervisor Elliott learned of this he told Washam that he did not want Coats to work any overtime and, if Washam persisted in arranging for Coats to work overtime in his place, Elliott would make things difficult for Washam in the shop. This testimony was corroborated by employees Ray Gallop and Craig Coats. Elliott did not testify and the Respondent did not in any other way dispute this testimony. Respondent's witness, Betty Rankin, testified that

[5] See C. P. Exh. 2.

it is the company's policy to pay employees overtime for fractions of an hour built up by employees punching in before or after their scheduled starting time. In the week of May 16, one employee punched in early and was paid for the overtime reported on his timecard. During that same week, however, Coats punched in at the same time and accumulated .3 hours of overtime that week and, although Supervisor Elliott had initialed Coats' card for overtime payment, Betty Rankin, the witness, wrote on the card no overtime authorized and refused to pay him for the time. Betty Rankin did not explain the disparate treatment of Coats with other employees at this time.

Based on the record as a whole, the stipulated overtime histories, the testimony of employees as to what management said and did, and the admissions of the Respondent's witnesses, all indicate and confirm that the Respondent discriminatorily reduced the overtime hours of Keith Hoag and Craig Coats after they had publicly identified themselves as the main organizers for the Union in the plant. Specifically, the denial of overtime became critical after the union election on March 24. It is my conclusion that the Respondent discriminatorily reduced the overtime hours for both Keith Hoag and Craig Coats because of their open support for the Union and that this was done to discourage membership in the Union in violation of Section 8(a)(3) and (7) of the Act, and I so find.

Paragraphs 20 and 21 of the complaint allege that on or about May 21, 1981, Respondent adversely changed the permanent press assignments of its pressroom employees, Keith Hoag, Craig Coats, Raymond Gallop, Rockwell Lyon, and Byron Washam, and on May 21, 1981, laid off its employee, Craig Coats, unilaterally without notification to the Union or bargaining with the Union, and that this discrimination was done to discourage membership in the Union and because the employees gave testimony under the Act in violation of Section 8(a)(1), (3), (4), and (5) of the Act.

On May 21, Don Richards, a part owner of the Respondent, called all of the employees together in the conference room and talked to the six pressroom employees. Supervisor Bill Ellitott was also present. Richards stated that by now the employees should have noticed that the Respondent had put a listing in the Kalamazoo and Battle Creek papers for a four-color pressman for their operations. Keith Hoag asked why he was being replaced and he was told by Richards that he was not putting out the production they expected. Richards advised that he thought Hoag had been raised up too fast. He stated that as a result of the hiring of a new employee all of the employees would be shuffled around. Richards advised that the employees would be moved downward. Although he said this was not a demotion, the employees certainly considered it as a demotion. A new employee, Mike Brand, had been hired on May 5, 1981, and Hoag was informed that Mike Brand from then on would operate the four-color press. Richards advised that Hoag then would be put on the two-color 40-inch press and the operator of that press, Ray Gallop, was demoted to the 25-inch two-color press, with its operator, Rocky Lyon, being demoted to the 35-inch one-color press. Byron Washam, the operator of the 35-inch one-color press, was demoted to the 15- and 17-inch one-color press. Craig Coats, who had run these presses was, in turn, demoted to becoming a floating helper in the pressroom. Thus, with the hiring of one employee, Mike Brand, the Respondent demoted each of its employees in the pressroom downward. The Respondent earlier had warned the employees that if a union came into the plant that everything would be run on seniority. Twenty minutes later Craig Coats, who had been demoted to a floating helper, was informed by Bill Elliott that he was laid off, effective immediately. Coats asked to finish the rest of the day but Elliott told him to leave immediately. To this date Coats has not been recalled from the layoff. Other unskilled employees, however, have been regularly hired by the Respondent to perform the same work that was performed by Coats. This record clearly reflects that the Respondent unilaterally, and without any notice to the Union, made these reassignments on May 21. The Union was given no opportunity to bargain over either the mass reassignments or the layoff of Coats.

Keith Hoag was first hired by Lawson Printers on January 31, 1977. He was hired to run a 35-inch single-color press. He ran this press for approximately 6 months and then was moved to a bigger press, a 40-inch two-color press. This is the press that he is currently operating.

Around June 1980, the Respondent obtained a new press called a Miehle four-color press. The press came unassembled and was the only four-color press in the plant. Hoag was offered the job of running this press and he also helped to assemble it. A representative from Miehle Corporation, William Gokman, was assigned to the plant to train the operator; in this case it was Hoag. Hoag operated this press from that time until May 21, when the Responent assigned the operation of this four-color press to new employee Mike Brand.

The Respondent argues that Hoag was not sufficiently skilled to operate the four-color press and that he had previously complained that he was allergic to the press and it was for these reasons that they hired a new employee to operate this four-color press. At the outset, I totally refuse to accept either of these reasons as being a basis for the demotion of Hoag. This record clearly reflects that Hoag operated this four-color press from the time it came on the premises in June 1980 until May 21, 1981. It is obvious that Hoag was capable of operating this press and he did in fact operate it. The only other person capable of operating the press was Bill Elliott, the supervisor, who did, in fact, operate the press when Mike Brand quit in October 1981. Additionally, the fact that Hoag at one point claimed to have a rash and suggested that it might be from the press is certainly no basis for the Respondent's hiring a new employee and demoting Hoag and all of the other employees in the pressroom. This rash was complained about many months before the demotions took place. The real intervening fact which precipitated this mass demotion was the Union's raising its head in the early part of 1981. With one move, the Company swiftly retaliated against its pressroom employees for their support of the Union by demoting all of the employees and terminating the

service of Craig Coats, who the Respondent was aware was one of the leading union adherents. The only pressman who was exempted from this retaliation was Roy Jacobs, the only pressman who refused to sign a union card, and the only pressman who had not attended any union meeting after the first one. The Respondent was clearly aware of this fact and took care of its own.

In considering this record as a whole, there is no question in my mind that the Respondent engaged in the mass reassignment of its pressroom employees and laid off employee Craig Coats because they had joined, assisted, or supported the Union in its organizational campaign and had voted the Union in at the Respondent's plant. There is no doubt that there was disparate treatment and that this conduct was clearly discriminatory in an attempt to discourage its employees from giving support to the Union or any other labor organization in violation of Section 8(a)(3) and (1) of the Act. Additionally, as this action was unilaterally taken without bargaining with the Union, it also clearly constitutes a major change in terms and conditions of employment of the employees in the bargaining unit in violation of Section 8(a)(1) and (5) of the Act.[6]

Paragraph 22 of the complaint alleges that on July 1, 1981, the Respondent laid off all of its pressroom and darkroom employees, except Raymond Gallop and Roy Jacobs, for one day and laid off all of its bindery employees for one-half day, and that by this discrimination and unilateral change without bargaining with the bargaining representative, the Respondent engaged in conduct violative of Section 8(a)(1), (3), and (5) of the Act.

The record reflects that the Company's normal workweek is Monday through Thursday, a four-day week. When a holiday falls on a Friday or Saturday, employees receive Thursday as a paid holiday and, when the holiday falls on Sunday, Monday is the paid holiday. The record reflects that July 4 is one of the six paid holidays. In July 1981, July 4 fell on a Saturday and the employees received a paid holiday for Thursday, July 2. In addition, the Company also laid off almost all of the bargaining unit employees on Wednesday, July 1, requiring them to take vacation pay if they wanted to be paid a full 40 hours.[7] The only employees not laid off were Raymond Gallop and Roy Jacobs who were nonunion employees. Mike Brand, who had been hired to replace Keith Hoag on the four-color press after the employees voted for the Union, received a vacation pay even though he had not been employed long enough to earn one.

When Keith Hoag asked Supervisor Bill Elliott why the layoff, Elliot replied that it was to take inventory. The record reflects that Hoag and Rocky Lyon had already taken a complete pressroom inventory several days prior to this and had turned it in to Elliott. The record reflects that this was the first time employees had been laid off on the day before a holiday. In 1979 the Fourth of July fell on a Wednesday and the plant was closed on Thursday to give the employees a long weekend. On every other holiday weekend in the company's history, the employees would work three days and receive a paid holiday, thus receiving a full paid workweek. There is no doubt that there was press work to be performed.

The Company did not notify the Union that the bargaining unit would be laid off on July 1, nor did it give the Union an opportunity to bargain over this fact. This change of past practices with regard to paid holidays and the layoff of virtually the entire bargaining unit are clearly mandatory subjects of bargaining and the Respondent's unilateral action in this regard clearly violates Section 8(a)(5) and (1) of the Act. In addition, it is clear that this action was designed to punish the bargaining unit employees for their support for the Union which is clearly evident by the preferential treatment accorded to employees Roy Jacobs and Mike Brand who did not support the Union. Such discrimination clearly discourages membership in this Union or any labor organization and violates Section 8(a)(1) and (3) of the Act, and I so find.

Paragraph 23 of the complaint alleges that about August 4, 10, and 12, 1981, the Respondent issued employee warning notices and/or absentee reports to its employees Robert Lyon and Raymond Gallop and by such conduct, the Respondent engaged in violations of Section 8(a)(1), (3), and (4) of the Act. The record reflects that prior to any union activity among the Respondent's employees, the Respondent had no disciplining system or warning-notice procedure. In fact, Betty Rankin admitted that the company did not begin issuing absentee and warning notices until after the union election on March 24.

On August 4, Rocky Lyon received a written warning notice from Dick Ullrich for talking to other employees. At the time he gave the written warning, Ullrich stated to Lyon that he had been trying to have people join a work slowdown and that this was the reason for the warning. Later Supervisor Bill Elliott gave Lyon a second written notice for being late to work, and told him to start a filing system. This was the first time that Lyon had ever received a written warning for being late for work.

About a week later on August 11, Ray Gallop received a written disciplinary notice from Bill Elliott for leaving work due to sickness. He received a second warning notice for being late and, on both occasions, Bill Elliott informed Gallop that he should get a filing system for his written-warning notices.

Although these written disciplinary notices were given to the employees after the Board issued its first amended complaint, I cannot conclude from this fact alone that this conduct on the part of the Respondent was based on any employees giving testimony to a Board agent in the investigation of this matter. Although I conclude that this conduct on the part of the Respondent was certainly discriminatory in changing working conditions, and was

[6] The fact that Board certification had not issued at this time is of little consequence, because Board law clearly states that an employer who makes unilateral changes after an election and before certification acts at his peril in making such changes in terms and conditions of employment during that period. And, where the final determination results in certification of a bargining representative, in this case the Union, Board law clearly holds that the employer violates Section 8(a)(5) and (1) for such unilateral changes made during that interim period. Therefore, the Respondent's engaging in unilateral changes in this case clearly violates Sec. 8(a)(1) and (5) of the Act, and I so find.

[7] Employees in the bindery were only laid off for one-half day.

done to discourage membership in the Union and because the employees supported the Union, and was done unilaterally without bargaining with the Union, in violation of Section 8(a)(1), (3), and (5) of the Act, I cannot find that this conduct also violates Section 8(a)(4) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The acts of the Respondent set forth above, occurring in connection with its business operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in, and continues to engage in, certain unfair labor practices, it will be recommended that the Board issue an Order requiring the Respondent to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including bargaining with the Union as the duly designated representative of the Respondent's pressroom employees in the appropriate unit effective from March 24, 1981, the date of the election. The Respondent will also be ordered to immediately offer reinstatement to Craig Coats to his former job or, if that job no longer exists, to an equivalent position of employment, without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay he may have suffered as a result of the discrimination against him in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).[8] Additionally, the Respondent will also be ordered to make all employees whole for any loss they may have suffered as a result of Respondent's discriminatory reduction in the amount of overtime work, the discriminatory layoff of July 1, 1981, the adverse changes in permanent press assignments, and its refusal to grant the unit employees their periodic wage increases, to be computed in the manner set forth above. The Respondent will also be ordered to rescind the discriminatory warnings issued to employees Rockwell Lyon and Raymond Gallop and any other employee who received such warning.

On the basis of these findings of fact and the entire record, I make the following

CONCLUSIONS OF LAW

1. Lawson Printers, Inc., the Respondent, is an employer within the meaning of Section 2(2) and is engaged in commerce as defined in Section 2(6) and (7) of the Act.

2. Local 263, Graphic Arts International Union, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since March 24, 1981, the Union has represented a majority of the employees in the appropriate unit described below, and has been the exclusive bargaining representative of said employees within the meaning of Section 9(a) of the Act. The appropriate bargaining unit is:

> All full-time and regular part-time production and maintenance employees, including pressroom employees, darkroom employees and bindery employees employed by Respondent at its 685 Columbus Avenue West, Battle Creek, Michigan, facility; but, excluding all office clerical employees, guards, and supervisors as defined in the Act.

4. By interrogating its employees concerning their union membership, activities, and sympathies; by creating the impression that it was engaged in surveillance of employee union activities and sentiments; by soliciting grievances from its employees and promising them that it would attempt to remedy said grievances; by informing employees that the discontinuance of wage increases was because of the Union and that there would be no more wage increases because of the employee organizational activity; threatening employees that in the future if they ran out of work, rather than follow past practices of reassigning employees, the Respondent would lay off the employees, Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

5. By failing to grant unit employees periodic wage increases in conformity with its past practice regarding such increases; by discriminatorily reducing the amount of overtime work assignments made available to employees Keith Hoag and Craig Coats; by adversely changing permanent press assignments of its pressroom employees Keith Hoag, Craig Coats, Raymond Gallop, Rockwell Lyon, and Byron Washam; by discriminatorily laying off employee Craig Coats; by discriminatorily laying off all of its pressroom and darkroom employees, except Raymond Gallop and Roy Jacobs, for one day and laying off all of its binding employees for one-half day, and by discriminatorily issuing employee-warning notices and/or absentee reports, which had not been used before the advent of the Union, to its employees Rockwell Lyon and Raymond Gallop because its employees assisted and/or supported the Union, and in order to discourage such support and/or assistance or membership in the Union, the Respondent has engaged in conduct violative of Section 8(a)(3) and (1) of the Act.

6. By unilaterally, without bargaining with the Union as the exclusive bargaining representative of its employees, engaging in the conduct described above in paragraph 5, Respondent has refused to bargain collectively with the exclusive representative of its employees and thereby did engage in conduct violative of Section 8(a)(5) and (1) of the Act.

The above-described unfair labor practices affect commerce within the contemplation of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

[8] See *Isis Plumbing Co.*, 138 NLRB 716 (1962).